

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed June 19, 2007 (the "Office Action"). At the time of the Office Action, Claims 1-33 were pending in the Application. The Office Action rejects Claims 1-33. In order to advance prosecution of this Application, Applicants have amended Claims 1, 9 and 17; and canceled Claims 8, 16, 24, and 32. Applicants respectfully submit that no new matter has been added. Applicants respectfully request reconsideration and favorable action in this case.

Section 101 Rejection

The Office Action rejects Claims 17-24 under 35 U.S.C. § 101 because the Office Action suggests that the claimed invention is directed to non-statutory subject matter. More specifically, the Office Action states that "[s]oftware or program per se is non-statutory subject matter." *Office Action*, page 2. However, the M.P.E.P. states that "[w]hen functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized." *M.P.E.P.* § 2106.01. Claim 17 recites that the logic is encoded in computer readable media. Therefore, Applicants respectfully request that this rejection of Claims 17-24 be withdrawn.

Section 102 Rejections

The Office Action rejects Claims 1-33 under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent Application Publication US 2003/0117678 A1 issued to Chang, et al., ("Chang"). Applicants respectfully traverse this rejection at least for the reasons discussed below.

To anticipate a claim, each and every limitation must be found in a reference. *See* MPEP § 2131. "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989). In addition, "[t]he elements must be arranged as required by the claim . . ." *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990).

As amended, Claim 1 recites computing a hybrid path route for a selected label switched path (LSP) between a first node and a second node of the plurality of nodes, the hybrid path route comprising at least one IP link and at least one lightpath of a wavelength division multiplex (WDM) topology coupled to the IP network. The Office Action contends that this is disclosed in *Chang* paragraph 0113. *Office Action*, page 3. Paragraph 0113 of *Chang* discusses network elements 121-125 and network control and management device (NC&M) 220 which are wavelength division multiplex (WDM) components. *Chang*, paragraph 0113. Throughout *Chang* any disclosure which may be related to routing deals only with optical components such as WDM network elements 121-125 depicted in FIG. 1. *See e.g.*, *Chang* FIG. 2 and paragraph 0105 (the source and destination for a path is shown to be two nodes in optical network 200); FIG. 5 and paragraph 117 (a WDM backbone network). *Chang* does not disclose using IP links when calculating routes or paths. In response to Applicants' previous remarks the Office Action contends that "Chang[] clearly illustrates in the figures, for example, figs 1-22 an IP network (fig. 1, network 110)." *Office Action*, page 5. However, while *Chang* discloses the existence of IP networks, as discussed above, it does not disclose a hybrid path. More specifically, *Chang* discloses receiving a packet from an IP router, converting it into a suitable optical form and then routing it through all optical components until it reaches its destination. *See e.g.*, *Chang*, FIGS. 17-19, 28, 29, 31, and 36; and paragraphs 155-156, 196, 197, 212 and 224. Thus, *Chang* does not disclose computing a hybrid path route for a selected label switched path (LSP) between a first node and a second node of the plurality of nodes, the hybrid path route comprising at least one IP link and at least one lightpath of a wavelength division multiplex (WDM) topology coupled to the IP network. Accordingly, for at least this reason, Claim 1 is allowable, as are all claims depending therefrom. For analogous reasons, Claims 9, 17, 25 and 33 are also allowable, as are all claims depending therefrom. Favorable action is requested.

Claim 2 recites decommissioning an idle IP link after rerouting the selected LSP. The Office Action contends that this is disclosed in *Chang* paragraph 0113. *Office Action*, page 4. *Chang* discloses collecting routing information, creating routing tables and then distributing the routing tables to various network elements. *Chang*, paragraph 0113. Nowhere does *Chang* disclose decommissioning an idle IP link after rerouting the selected LSP. In response to Applicants' previous remarks the Office Action contends that *Chang* inherently discloses

decommissioning an idle IP link based on *Chang*'s disclosure of "the controller . . . perform[ing] the computation of the routing tables." *Office Action*, page 6. However, creating and distributing routing tables does not inherently disclose decommissioning an idle link. A routing table simply matches a destination address with the network path to be used to reach the destination. Thus creating a routing table does not decommission an idle IP link. Therefore, for at least this additional reason Applicants request that this rejection of Claim 2 be withdrawn. For analogous reasons, Applicants also request that this rejection of Claims 10, 18, and 26 be withdrawn.

Claim 3 recites "receiving a transformed topology constructed by an optical transport service provider of the WDM topology, the transformed topology comprising a subset of available lightpaths of the WDM topology; and wherein the hybrid path is computed based on the transformed topology." The Office Action contends that this is disclosed by way of example in paragraphs 0104 and 0113 of *Chang*. *Office Action*, page 3. These cited portions of *Chang* disclose using a connection table that is constantly updated (paragraph 0104) and generating and distributing routing tables (paragraph 0113). However, nowhere does *Chang* disclose receiving a transformed topology comprising a subset of available lightpaths. For at least this reason Applicants respectfully request that this rejection of Claim 3 be withdrawn. For analogous reasons, Applicants also request that this rejection of Claims 11, 19, and 27 be withdrawn.

Claim 4 recites that determining whether performance of the hybrid path route for the selected LSP reduces costs comprises accounting for a cost associated with each IP link and each lightpath of the hybrid path route. The Office Action contends that this is disclosed in *Chang* paragraph 0105. *Office Action*, page 4. As discussed above, *Chang* is only concerned with routing and costs associated with optical components. *See e.g.* *Chang*, Abstract, paragraphs 99 and 0105. Thus, *Chang* does not disclose determining whether performance of the hybrid path route for the selected LSP reduces costs comprises accounting for a cost associated with each IP link and each lightpath of the hybrid path route. Accordingly, for at least this additional reason Applicants request that this rejection of Claim 4 be withdrawn. For analogous reasons, Applicants also request that this rejection of Claims 12, 20 and 28 be withdrawn.

The Office Action rejects Claim 33 along with Claims 1, 9, 17 and 25. However, in addition to reciting elements similar to Claim 1, Claim 33 further recites:

receiving a transformed topology constructed by an optical transport service provider of a wavelength division multiplex (WDM) topology, the transformed topology comprising a subset of available lightpaths of the WDM topology, each lightpath of the WDM topology coupling optical crossconnects of the WDM topology; computing, based on the transformed topology, a hybrid path route for the selected LSP between a first node and a second node of the plurality of nodes . . . decommissioning an idle IP link after rerouting the selected LSP

For at least the reasons discussed above with respect to Claims 1, 2, and 3, Applicants respectfully request that Claim 33 be allowed.

No Waiver

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the Examiner's rejections.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the present application is not allowed and/or if one or more of the rejections is maintained, Applicants hereby request a telephone conference with the Examiner and further requests that the Examiner contact the undersigned attorney to schedule the telephone conference.

The Commissioner is authorized to charge the \$790.00 RCE filing fee, and to the extent necessary, any additional required fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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